

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) **No. 4:14-CR-246 AGF/NAB**
v.)
)
THOMAS ANDERSON, JR.)
)
Defendant.)

MOTION TO COMPEL

Defendant Thomas Gregory Anderson, Jr. (“Anderson”), by and through his counsel, Justin K. Gelfand and William Margulis and their law firm, Capes, Sokol, Goodman & Sarachan, P.C., respectfully requests that this Court compel the Government to make available for Anderson’s review and inspection Anderson’s cellular telephone subpoenaed by the Government during the course of the pre-trial evidentiary hearings concerning conflicts of interest and Government misconduct. Anderson’s undersigned counsel is filing this motion at Anderson’s request.

Prior to filing this motion, Anderson’s undersigned counsel requested that the Government make available this cellular telephone to Anderson in the U.S. Attorney’s Office for Anderson’s inspection in the presence of Anderson’s counsel. The Government has refused this request.

I. Relevant Background

Post-indictment and pre-trial, the Government subpoenaed Anderson’s cellular telephone. This phone was brought to Anderson at the Warren County Jail by Anderson’s former RSRG counsel and was the subject of substantial pretrial litigation. Based on evidence obtained since then, Anderson is investigating the possible existence of new evidence that he believes may be

necessary to at least raise at the district court level to preserve issues prior to filing an appeal with the United States Court of Appeals for the Eighth Circuit.

Anderson simply seeks the opportunity to inspect this cellular telephone at the U.S. Attorney's Office and subsequently to discuss potential legal strategies, if any, with undersigned counsel. To facilitate Anderson's request, undersigned counsel made this request on Anderson's behalf. The Government has informed undersigned counsel it will *not* make this phone available to Anderson for his review and inspection. Accordingly, Anderson has exhausted all possible remedies on this issue short of involving this Court.

II. This Court Should Compel the Government to Make this Discovery Available

Given the extensive pretrial litigation in this case and the inevitable consideration by the Court of Appeals on these important issues, Anderson submits that the discovery Anderson seeks to compel is material to his defense and discoverable under Federal Rule of Criminal Procedure 16(a)(1)(E)(i), as well as the United States Supreme Court decisions in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972)—at least to the extent that he should be entitled to review this discovery prior to sentencing. District courts have broad discretion to resolve motions to compel discovery in criminal cases. See *United States v. Hintzman*, 806 F.2d 840, 846 (8th Cir. 1986).

Anderson submits that this discovery is relevant to defenses he has advanced in this case and is necessary to ensure all relevant issues are raised at the district court level. Anderson further submits that this discovery is relevant based on evidence introduced at trial regarding Anderson's alleged communications with others and Anderson's alleged whereabouts.

Finally, as this evidence was obtained by compulsory process *from Anderson*, it is hard to understand why the Government would oppose this request given all that has been litigated in this case to date.

III. Conclusion

Based on the foregoing, Anderson respectfully requests that this Court grant this motion to compel.

Respectfully submitted,

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Certificate of Service

I hereby certify that I filed the foregoing through the Court's CM/ECF system which will provide notice of filing to all counsel of record.

/s/ WILLIAM MARGULIS

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